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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

14 WILDEARTH GUARDIANS,

15 Plaintiff,

16 v.

17 UNITED STATES FISH AND
18 WILDLIFE SERVICE and UNITED
19 STATES FOREST SERVICE,

20 Defendants.

CASE NO. 4:13-cv-151-RCC

**DEFENDANTS' MOTION TO CLARIFY
[EXPEDITED REVIEW REQUESTED]**

Pursuant to Federal Rules of Civil Procedure 60(a) and 59(e), Defendants hereby move the Court to clarify its September 11, 2019 Order, ECF No. 89. More specifically, Defendants respectfully request that the Court clarify the breadth of its injunction order. Defendants respectfully submit that the order enjoining timber management activities in Region 3 should apply only to the six forests that operate under the 2012 biological opinions (“2012 BiOps”), and not apply to the five forests that have already completed reinitiated consultation and are operating under new BiOps. In support of this request, Defendants state as follows:

1. The Court found the claims related to five of the 11 disputed BiOps to be moot. *See* ECF No. 89 at 13:

The Court previously ruled that Plaintiff’s claims as they relate to five of the original eleven disputed BiOps are now moot: those pertaining to the Kaibab, Prescott, Apache-Sitgreaves, Coconino, and Coronado national forests. (*See* Doc. 62-1 at 4, n.3; Doc. 70 at 3, 4; Doc. 76.) Therefore, the Court addresses only the remaining six BiOps: the March 30, 2012 BiOps for the Lincoln, Santa Fe, Cibola, and Carson national forests, and the April 30, 2012 BiOps for the Tonto and Gila national forests.”

2. The Court then found the remaining six 2012 BiOps (Lincoln, Santa Fe, Cibola, Carson, Tonto, and Gila) to be invalid for failing to adequately address the Mexican spotted owl’s recovery as part of the overall jeopardy analysis. *See* ECF No. 89 at 20-24.
3. As a remedy, the Court stated “that halting the USFS timber management actions under the 2012 BiOps until the conclusion of a formal consult and the issuing of superseding BiOps is appropriate. The Court will therefore grant an injunction of USFS timber management actions in Region 3 National Forests and order Defendants to reinitiate formal consultation.” *See* ECF No. 89 at 38; *see also id.* at 39 (“USFS timber management actions in Region 3 national forests must cease pending formal consultation.”).
4. Due to the Court’s reference to “Region 3 national forests,” Defendants recognize

1 that the Court's order could be interpreted to enjoin all timber management activities
 2 throughout Region 3 – *i.e.*, in all 11 forests in Region 3, but such a reading would be
 3 inconsistent with the Court's ruling that the Court lacked jurisdiction over Plaintiff's
 4 challenges to the 2012 BiOps for six of those forests. Defendants therefore request
 5 clarification that the Court's injunction *pertains only to the six forests in Region 3*
 6 *(Lincoln, Santa Fe, Cibola, Carson, Tonto, and Gila)* that operate under the 2012
 7 BiOps.

- 8 5. Defendants reserve the right to seek further relief under Fed. R. Civ. P. 60(a) and
 9 59(e) as the Forest Service continues reviewing the potential implications of the
 10 Court's order on specific management actions.

11 Dated: September 17, 2019

Respectfully Submitted,

13 JEAN E. WILLIAMS,
 14 Deputy Assistant Attorney General
 15 SETH M. BARSKY, Section Chief
 16 S. JAY GOVINDAN,
 Assistant Section Chief

17 /s/ Rickey D. Turner, Jr.
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WILDEARTH GUARDIANS,

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v.

UNITED STATES FISH AND
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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.